

SAMUEL J. HENSLEY.

[To accompany Senate Bill No. 249.]

APRIL 10, 1860.

Mr. SCOTT, from the Committee on Indian Affairs, made the following

REPORT.

*The Committee on Indian Affairs, to whom the report and Senate bill No. 249, for the relief of Samuel J. Hensley was referred, report:*

That this claim is for compensation for twelve hundred and eighty-five head of cattle furnished the agents of the United States, at fifteen cents per pound, and by them fed to the Indians in the reserves in California in 1852 and 1853.

The claim was presented to the Court of Claims as a *legal* demand against the government, and the fact established to the satisfaction of the court that six hundred and forty-two thousand five hundred pounds of beef, worth fifteen cents per pound, were furnished by the claimant to the agent of the United States, and fed to the Indians on said reserves.—(See opinions of the court, page 51.)

The court decided that the claim was not a *legal* demand against the United States, because the officer with whom the claimant contracted was not authorized by law to make the contract. The perfect good faith of the claimant throughout the whole transaction is conceded. He believed that the agent had the necessary authority, and sold and delivered his property to a public officer, and it was used for public purposes, at a fair price, in the full expectation that he would be paid the stipulated price without delay.

The counsel for the claimant before the Court of Claims contended that, although the agent was not empowered by law to make the contract, his proceedings were subsequently ratified by a series of acts of Congress, which adopted the policy and measures which the claimant's property was used by the government agents to carry into effect.

The opinion of the court sets forth from authentic sources the history of the strife between the whites and Indians in California, and shows that, under the circumstances of the case, the Indians being driven from their homes, and their food taken from them, that the war which was going on, becoming general, could have no end but by exterminating the Indians, unless they were collected in reserves and fed temporarily till they could have an opportunity to provide for

themselves. It was under such circumstances that treaties were made with them by the agents stipulating for reserves of land and provisions for a year or two.

The provisions stipulated for had to be furnished at once, as the Indians were starving, and must rob if not fed. The wisdom and necessity of this course was never questioned by any one, and it was approved at the time by the President. Peace was the immediate result of it. The Senate rejected the treaties, but the appropriation contained in the act of August 30, 1852, (10 Stat., page 156,) for the preservation of peace with the Indians who had been dispossessed of their lands in California until permanent arrangement for their settlement could be made, originated in the Senate; and afterwards, by the act of 1853, (*ib.*, p. 238,) Congress adopted in substance the policy of the rejected treaties, of collecting the Indians in reserves and feeding them there temporarily.

The court held that, in rejecting the treaties, Congress repudiated the contract with Hensley, and that although Congress afterwards adopted by law the policy of the treaties, and Hensley's property was applied to carry it into effect, yet, holding the law to be *prospective* in its operation, the court decided that Hensley was properly excluded from the benefits of the appropriations by the department.

It is not necessary for the committee to express any opinion on the legal question upon which the decision of the Court of Claims turned, there being no question that the beef for which compensation is claimed was furnished to officers of the government in good faith, and applied successfully to put an end to a war of extermination between the whites and Indians in furtherance of the policy adopted by Congress; there can be no question that the government ought to pay for property so applied to public uses, and the committee accordingly recommend the passage of the bill as passed by the Senate for the relief of said Hensley.